

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	8:05CR249
vs.)	
)	PRELIMINARY ORDER
DOUGLAS BIVENS,)	OF FORFEITURE
)	
Defendant.)	

NOW ON THIS 4th day of October, 2005, this matter comes on before the Court upon the United States' Motion for Issuance of Preliminary Order of Forfeiture and Memorandum Brief. The Court reviews the record in this case and, being duly advised in the premises, finds as follows:

1. The Defendant has entered into a Plea Agreement, whereby he has agreed to plead guilty to Counts I, II and III of said Information. Count I of said Information charges the Defendant with possession with intent to distribute marijuana, a violation of 21 U.S.C. § 841, and Count II of said Information charges the Defendant with possession of a firearm during a drug trafficking crime, a violation of 18 U.S.C. § 924(c). Count III of said Information charges the Defendant with using the following:

a. The following-described property located in Washington County, Nebraska:

Tax Lot 23, being a tract of land lying in the NW¹/₄ of the NW¹/₄ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, more particularly described as follows: commencing at the NW

corner of Section 33, and assuming the West line of said Section to bear due North-South; thence North 89°34'04" East along the North line of said Section a distance of 33.0 feet to the point of beginning; thence continuing North 89°34'04" East a distance of 838.2 feet; thence South a distance of 750.0 feet; thence South 89°34'04" West a distance of 838.2 feet to the easterly right-of-way of a county road; thence North a distance of 750.0 feet to the point of beginning. Except that part of Tax Lot 23, lying in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, more particularly described as follows: from the NW corner of Section 33, Township 17 North, Range 13 East; thence South 00°00'00" East (assumed bearing) along the West line of the NW $\frac{1}{4}$ of said Section 33 a distance of 750.02 feet; thence North 89°30'37" East a distance of 33.00 feet to the SW corner of Tax Lot 23 in said Section 33 lying on the easterly right-of-way line of County Road 51 and the point of beginning; thence North 00°00'00" West along said easterly right-of-way line a distance of 438.30 feet; thence North 89°30'37" East a distance of 483.30 feet; thence South 00°00'00" East a distance of 438.30 feet to a point on the South line of said Tax Lot 23; thence South 89°30'37" West along said South line a distance of 438.30 feet to the point of beginning. Together with Tax Lot 25, being the North 750 feet of the East 871.2 feet of the West 1,742.4 feet of the NW $\frac{1}{4}$ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, and all more particularly described as follows: beginning at a point on the North line of said Section 33 and 871.2 feet East of the NW corner of said Section 33; thence North 89°34'04.6" East along said North line a distance of 871.2'; thence South 00°00'00" East parallel to the West line of Section a distance of 750 feet; thence South 89°34'04.6" West parallel to the North line of the Section a distance of 871.2 feet; thence North 00°00'00" East parallel to the West line of the Section a distance of 750 feet to the point of beginning. Now known as Tax Lot 41 in the N $\frac{1}{2}$ NW $\frac{1}{4}$ 33-17N-13E of the 6th P.M.

- b. One 1999 Ford F-350 Pickup, VIN 1FTSW31F7XEC65281, seized from the residence of DOUGLAS W. BIVENS on May 16, 2005, by deputies of the Washington County Sheriff's Department.
- c. Three hundred forty-nine dollars in United States currency seized from the residence of DOUGLAS W. BIVENS on May 16, 2005, by deputies of the Washington County Sheriff's Department.

to facilitate the commission of the controlled substance violation and charges said properties are derived from proceeds obtained directly or indirectly as a result of the commission of the controlled substance violation.

2. By virtue of said plea of guilty, the Defendant forfeits his interest in the subject properties, and the United States should be entitled to possession of said properties, pursuant to 21 U.S.C., § 853.

3. The United States' Motion for Issuance of Preliminary Order of Forfeiture should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A. The United States' Motion for Issuance of Preliminary Order of Forfeiture is hereby sustained.

B. Based upon Count III of the Information and the Defendant's plea of guilty, the United States Marshal for the District of Nebraska ("Marshal") is hereby authorized to seize the following-described properties:

a. The following-described property located in Washington County, Nebraska:

Tax Lot 23, being a tract of land lying in the NW¹/₄ of the NW¹/₄ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, more particularly described as follows: commencing at the NW corner of Section 33, and assuming the West line of said Section to bear due North-South; thence North 89°34'04" East along the North line of said Section a distance of 33.0 feet to the point of beginning; thence continuing North 89°34'04" East a distance of 838.2 feet; thence South a distance of 750.0 feet; thence South 89°34'04" West a distance of 838.2 feet to the easterly right-of-way of a county road; thence North a distance of 750.0 feet to the point of beginning. Except that part of Tax Lot 23, lying in the NW¹/₄NW¹/₄ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, more particularly described as follows: from the NW corner of Section 33, Township 17 North, Range 13 East;

thence South 00°00'00" East (assumed bearing) along the West line of the NW¼ of said Section 33 a distance of 750.02 feet; thence North 89°30'37" East a distance of 33.00 feet to the SW corner of Tax Lot 23 in said Section 33 lying on the easterly right-of-way line of County Road 51 and the point of beginning; thence North 00°00'00" West along said easterly right-of-way line a distance of 438.30 feet; thence North 89°30'37" East a distance of 483.30 feet; thence South 00°00'00" East a distance of 438.30 feet to a point on the South line of said Tax Lot 23; thence South 89°30'37" West along said South line a distance of 438.30 feet to the point of beginning. Together with Tax Lot 25, being the North 750 feet of the East 871.2 feet of the West 1,742.4 feet of the NW¼ of Section 33, Township 17 North, Range 13 East of the 6th P.M., Washington County, Nebraska, and all more particularly described as follows: beginning at a point on the North line of said Section 33 and 871.2 feet East of the NW corner of said Section 33; thence North 89°34'04.6" East along said North line a distance of 871.2'; thence South 00°00'00" East parallel to the West line of Section a distance of 750 feet; thence South 89°34'04.6" West parallel to the North line of the Section a distance of 871.2 feet; thence North 00°00'00" East parallel to the West line of the Section a distance of 750 feet to the point of beginning. Now known as Tax Lot 41 in the N½NW¼ 33-17N-13E of the 6th P.M.

- b. One 1999 Ford F-350 Pickup, VIN 1FTSW31F7XEC65281, seized from the residence of DOUGLAS W. BIVENS on May 16, 2005, by deputies of the Washington County Sheriff's Department.
- c. Three hundred forty-nine dollars in United States currency seized from the residence of DOUGLAS W. BIVENS on May 16, 2005, by deputies of the Washington County Sheriff's Department.

C. The Defendant's interest in said properties is hereby forfeited to the United States of America for disposition in accordance with the law, subject to the provisions of 21 U.S.C., § 853(n)(1).

D. The aforementioned forfeited properties are to be held by the Marshal in his secure custody and control.

E. Pursuant to 21 U.S.C., § 853(n)(1), the Marshal forthwith shall publish at least once for three successive weeks in a newspaper of general circulation, in the county where the subject

properties are situated, notice of this Order, notice of the Marshal's intent to dispose of the properties in such manner as the Attorney General may direct, and notice that any person, other than the Defendant, having or claiming a legal interest in any of the subject forfeited properties must file a Petition with the court within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever is earlier.

F. Said published notice shall state the Petition referred to in Paragraph E., above, shall be for a hearing to adjudicate the validity of the Petitioner's alleged interest in the properties, shall be signed by the Petitioner under penalty of perjury, and shall set forth the nature and extent of the Petitioner's right, title or interest in the subject properties and any additional facts supporting the Petitioner's claim and the relief sought.

G. The United States may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the properties subject to this Order as a substitute for published notice as to those persons so notified.

H. Upon adjudication of all third-party interests, this Court will enter a Final Order of Forfeiture pursuant to 21 U.S.C., § 853(n), in which all interests will be addressed.

ORDERED this 4th day of October, 2005.

BY THE COURT:

s/Joseph F. Bataillon
JOSEPH F. BATAILLON, CHIEF JUDGE
United States District Court